

FILED

APR 4 2023

BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

PITT ELECTRIC ORI, LLC
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2020-6229
) INSPECTION NUMBER: 318166931
) CSHO ID: T7621

) STIPULATION AND
) NOTICE OF
) SETTLEMENT

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent is a North Carolina limited liability company duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Garner, North Carolina.
2. On June 11, 2019, Kevin Higham, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1801 Fayetteville Street, Campus Drive, Durham, North Carolina.

3. As a result of the inspection, on December 11, 2019, Complainant issued the following Citation:

CITATION NUMBER ONE (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.651(a)	Immediately Upon Receipt	\$4,900.00
2	29 CFR 1926.654(k)(1)	Immediately Upon Receipt	\$4,900.00
3	29 CFR 1926.652(a)(1)(ii)	Immediately Upon Receipt	\$4,900.00

CITATION NUMBER TWO (Nonserious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.29(b)(3)	Immediately Upon Receipt	\$350.00

4. The Respondent submitted a timely Notice of Contest, dated January 13, 2020.
5. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:
- a. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended below, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "the Act").
 - b. Complainant agrees to make the following amendments to the Citation items:
 - i. Delete Citation 1, Item 1 and associated penalty;
 - ii. Delete Citation 1, Item 2 and associated penalty; and,
 - iii. Reclassify Citation 1, Item 3 as non-serious with a \$1000.00 penalty.
 - c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following:
 - i. Respondent agrees to continue its use of a third-party safety consulting service company to provide inspections for a period of not less than twelve months.

- d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.
 - e. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes. Respondent's agreement to accept any Citation in this Agreement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter.
 - f. There are no other outstanding matters to be addressed in this proceeding.
 - g. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
6. The foregoing terms are reasonable and supported by the underlying facts.
7. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and over the subject matter.
2. The parties' proposed resolution of this matter is consistent with the purpose and objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The parties' agreement, as set out above, is approved.
2. The parties shall comply with the terms and conditions set out above.
3. The Respondent shall pay the penalty of \$1350.00 within 45 days of this Consent Order.

This **Apr 4, 2023**

Reagan Weaver

Reagan Weaver (Apr 4, 2023 19:57 EDT)

Reagan Weaver
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (Apr 4, 2023 15:14 EDT)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
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Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

MICHAEL LORD
WILLIAMS MULLEN
PO BOX 1000
RALEIGH, NC 27602

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:


RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101
carla.rose@labor.nc.gov

via email.

THIS THE 10 DAY OF April 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
TEL.: (919) 733-3589
NCOSHRC@labor.nc.gov